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| APPLICATION NO.                                                    | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 09/770,518                                                         | 01/26/2001  | Pierre Messier       | CLW 2 0142          | 5871             |
| 24964                                                              | 7590        | 03/23/2007           | EXAMINER            |                  |
| GOODWIN PROCTER L.L.P.<br>599 LEXINGTON AVE.<br>NEW YORK, NY 10022 |             |                      | CHORBAJI, MONZER R  |                  |
|                                                                    |             | ART UNIT             | PAPER NUMBER        |                  |
|                                                                    |             | 1744                 |                     |                  |
| SHORTENED STATUTORY PERIOD OF RESPONSE                             | MAIL DATE   | DELIVERY MODE        |                     |                  |
| 3 MONTHS                                                           | 03/23/2007  | PAPER                |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/770,518             | MESSIER ET AL.      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | MONZER R. CHORBAJI     | 1744                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 January 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 52,55,56,62,64-66,69,70,76,78-80,83,84,90,92 and 93 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 52,55,56,62,64-66,69,70,76,78-80,83,84,90,92 and 93 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 June 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.                                                         | 6) <input type="checkbox"/> Other: _____.                         |

## DETAILED ACTION

This final action is in response to the RCE received on 01/24/2007

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claims 52, 55-56, 62, 64-66, 69-70, 76, 78-80, 83-84, 90 and 92-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petri (EP 0842 605 A1) in view of Belfer et al (U.S.P.N. 6,106,854).

Regarding claims 52, 66 and 80, the Petri reference discloses a method (page 3, numbered lines 20-21) for spraying a disinfectant composition (page 3, lines 22-23) in aerosol form (page 9, numbered lines 53-54) on inanimate surfaces (page 10, numbered lines 2-10) that includes the following: about 11% by volume of hydrogen peroxide (page 3, numbered lines 44-45 and converting 15% by weight using the density value for hydrogen peroxide at 20 degree Celsius to be 1.45 g/ml), about 12% by volume of Geraniol as antimicrobial active of essential oil (page 3, numbered lines 47-48 and page 4, numbered line 3 and converting 10% by weight using the density value of Geraniol to be 0.877 g/ml), about 9% by volume of polyacrylic acid as shear thinning polymeric thickener (page 4, numbered lines 10-11, page 4, numbered line 21, page 5, numbered lines 1-3 and converting 10% by weight using the density value for polyacrylic acid of 1.09 g/ml), about 3% by volume of malonic acid as an optional ingredient chelating agent (page 8, numbered lines 52-57 and converting 5% by weight using the density value for malonic acid to be 1.619 g/ml), about 4% by volume of catechol as an optional ingredient radical scavenger (page 9, numbered lines 2, page 9, numbered line 7, page 9, numbered lines 13-15 and converting 5% by weight using the density value for catechol to be 1.3 g/ml), 13% by volume of ethanol as an optional ingredient solvent (page 9, numbered lines 26-27 and converting 10% by weight using the density value for ethanol at 20 degree Celsius to be 0.79 g/ml, equivalent to the

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flash vaporization component having two carbon atoms) and about 47% by volume of water up to 100% (page 5, numbered lines 45-46). For example, density of Hydrogen peroxide at 20 degree Celsius is 1.45 g/ml.  $(15\text{g}) \times (1/1.45 \text{ ml/g}) = 10 \text{ ml}$ . The Petri reference further teaches that upon spraying the composition onto a hard surface, no residues (page 10, numbered lines 11-13) are left (equivalent to leaving an essentially dry surface having anti-microbial agent deposited upon). The Petri reference further teaches that the compositions are packaged in spray dispensing containers (page 9, numbered lines 37-54) that intrinsically include spray nozzles for spraying the composition onto hard surfaces in an aerosol form. However, with respect to claims 52, 66 and 80, the Petri reference fails to teach higher concentration values for ethanol. The Belfer reference, which is in the art of designing aqueous hard surface disinfectant compositions that include hydrogen peroxide, teaches the concentration range for ethanol is between 35.0-50.0% by weight (col.4, lines 17-23). For example, based on the Petri composition explained above, 44% by volume of ethanol as an optional ingredient solvent (page 9, numbered lines 26-27 and converting 35% by weight using the density value for ethanol at 20 degree Celsius to be 0.79 g/ml, equivalent to the flash vaporization component having two carbon atoms) and about 20% by volume of water up to 100% (page 5, numbered lines 45-46). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to increase the concentration of ethanol of the Petri reference as taught by the Belfer reference since ethanol acts as a biocide agent (col.10, lines 11-60 and tables 2-4)

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thereby adding more of ethanol to Petri's composition would magnifies its biocidal properties.

Regarding claims 55-56, 69-70 and 83-84, the Petri reference teaches including ethanol (page 9, numbered lines 26-27) in the disinfectant composition.

Regarding claims 62, 76 and 90, the Petri reference discloses a method (page 3, numbered lines 20-21) for spraying a disinfectant composition (page 3, lines 22-23) in aerosol form (page 9, numbered lines 53-54) on inanimate surfaces (page 10, numbered lines 2-10) that includes about 11% by volume of hydrogen peroxide (page 3, numbered lines 44-45 and converting 15% by weight using the density value for hydrogen peroxide at 20 degree Celsius to be 1.45 g/ml).

Regarding claims 64-65, 78-79 and 92-93, the Petri reference teaches including ethanol (page 9, numbered lines 26-27) in the disinfectant composition.

***Response to Amendment***

5. The Declaration under 37 CFR 1.132 filed on 01/24/2007 is insufficient to overcome the rejection of claims 52, 55-56, 62, 64-66, 69-70, 76, 78-80, 83-84, 90 and 92-93 based upon obviousness rejection as set forth in the last Office action because: the objective evidence of non-obviousness is not commensurate in scope with the instant claims, which do not recite any time interval. In addition, Applicant's evidence does not compare claimed invention with the combination of Petri in view of Belfer et al. The submitted evidence is directed solely to Petri not the combination.

***Response to Arguments***

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6. Applicant's arguments filed on 01/24/2007 have been fully considered but they are not persuasive.

On page 7 of the Remarks section, Applicant argues that Petri's composition is not a flash-dry composition based on the Declaration submitted where differences in dry times between Petri's composition and the instant claims exist. The submitted evidence is not commensurate in scope with the instant claims, because they do not recite any time intervals.

On page 8 of the Remarks section, Applicant argues that Belfer fails to teach the use of a flash-dry composition. Belfer is combined with Petri for the limitation of using higher concentration values of ethanol where Petri teaches using lower concentrations values of ethanol. Therefore, Belfer is irrelevant to the flash-dry feature that is already taught by Petri.

### ***Conclusion***

7. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

8. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 9:00-5:30.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GLADYS J. CORCORAN can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MRC

  
GLADYS J.P. CORCORAN  
SUPERVISORY PATENT EXAMINER